

**FILED**

**FEB 25 2016**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

Clerk, U.S. Courts  
District Of Montana  
Missoula Division

STEVE KELLY,

Plaintiff,

vs.

SCOTT BROWN,

Defendant.

CV 16-03-H-DLC-JTJ

**ORDER**

United States Magistrate Judge John Johnston entered his Order, Findings and Recommendations in this matter on January 25, 2016, recommending dismissal of Plaintiff Steve Kelly’s (“Kelly”) Complaint. Kelly failed to timely object to the Findings and Recommendations, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no

clear error in Judge Johnston's conclusion that Kelly's Complaint should be dismissed because the Court lacks subject matter jurisdiction over this matter. Further, the Court agrees that Kelly's Complaint fails to state a claim for relief and cannot be cured by amendment. Because Kelly cannot bring forth facts supporting a federal cause of action, and all that remain are state law claims, the Court exercises its discretion under 28 U.S.C. § 1337(c)(3) and declines jurisdiction over Kelly's state law claims.

IT IS ORDERED that:

- (1) Judge Johnston's Findings and Recommendations (Doc. 6) are ADOPTED IN FULL.
- (2) Plaintiff Steve Kelly's Complaint (Doc. 2) is DISMISSED with prejudice. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.
- (3) The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

Dated this 25<sup>th</sup> day of February, 2016.



Dana L. Christensen  
Dana L. Christensen, Chief Judge  
United States District Court